



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

TYRONE F. SWAIN,

Petitioner,

v.

LARRY SMALL, WARDEN,

Respondent.

} Case No. CV 08-04186 GAF (AN)

} ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the Magistrate Judge's Report and Recommendation ("R&R") and Petitioner's Objections thereto, *de novo*. IT IS ORDERED that:

1. The Court finds the Objections fail to demonstrate that the findings and conclusions set forth in the R&R are based upon errors of fact or law. Therefore, the Objections are overruled and the R&R is approved and adopted.

2. Judgment shall be entered denying the Petition and dismissing this action with prejudice.

3. All motions are denied as moot and terminated.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this Order and the Judgment on all counsel or parties of record.

Dated: January 9, 2009



---

GARY A. FEES  
UNITED STATES DISTRICT JUDGE